

REMARKS

- Claims 1-91 and 101-121 are pending in the present application.
- Claims 46 and 82 have been amended
- Claims 1, 24, 46, 67 and 101 are independent.

Applicants have amended Claim 82 to depend upon Claim 81 as previously agreed upon in a telephone interview with Examiner Myhre on August 22, 2003. Applicants' amendment of Claim 46 will be discussed below.

I. Double Patenting Rejection

Claims 1, 24, 46, and 67 stand "rejected under the judicially created doctrine of obviousness-type double patenting" as being unpatentable over claims 1-5, 14, and 17 of U.S. Patent No. 6,658,390 issued to Walker et al.

While we do not agree with this rejection, a terminal disclaimer is filed concurrently herewith solely to expedite the prosecution of the present application. Accordingly, the double patenting rejection of Claims 1, 24, 46, and 67 is moot.

II. Section 101 Rejection

Claims 46-66 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. [Current Office Action, page 4]. While Applicants disagree with the Examiner's rejection of the claims, Applicants have amended independent Claim 46 to transmit data "via a network" as suggested by the Examiner [Current Office Action, page 7] to expedite prosecution of the instant claims, support for which may be found in the Specification at page 7, lines 14 to 18.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the instant Section 101 rejection of Claim 46 and claims 47-66, dependent thereon.

Applicants intend to seek claims in subsequent continuing applications directed to the original subject matter and pursue the instant claims without prejudice or disclaimer.

III. Section 102(e) Rejection

A. **The Specification has been amended to indicate a claim to the benefit of priority of U.S. Patent Application No. 09/260,439**

In accordance with 37 C.F.R. § 1.78(a), the Specification has been amended to indicate a claim to the benefit of priority of U.S. Patent Application No. 09/260,439, filed March 2, 1999, which issued on December 2, 2003, as U.S. Patent No. 6,658,390 B1 (“Walker”). The present application (filed April 1, 1999) and the prior-filed 09/260,439 application were thus co-pending.

In accordance with 37 C.F.R. § 1.78(a)(1), the prior-filed application 09/260,439 names as an inventor at least one inventor (e.g., Jay Walker) named in the present (later-filed non-provisional) application, and also discloses the named inventor’s invention claimed in at least one claim of the present (later-filed non-provisional) application in the manner provided by the first paragraph of 35 U.S.C. § 112.

The present (later-filed) application is pending. As the present application was filed under 35 U.S.C. 111(a) before November 29, 2000, we may submit the reference to claim priority at this time without a petition. 37 C.F.R. § 1.78(a)(2)(ii)(B).

We make this claim solely in order to expedite prosecution.

B. **All of the Section 102(e) Rejections Are Overcome**

All of the pending claims (Claims 1-91 and 101-121) stand rejected under 35 U.S.C. 102(e) as being anticipated by Walker. [Office Action, pages 7-8].

Thus, all of the Section 102(e) rejections rely on Walker.

However, the Section 102(e) rejections are moot in light of this Amendment to claim the benefit of Walker. As priority of the present application has been perfected by this Amendment, Walker is no longer prior art under Section 102(e). See MPEP § 706.02(b) “Overcoming a 35 U.S.C. 102 Rejection Based on a Printed Publication or Patent [R-1].”

We are grateful to the Examiner for bringing the 09/260,439 application (Walker) to our attention. We respectfully request that the Examiner withdraw all of the Section 102(e) rejections.

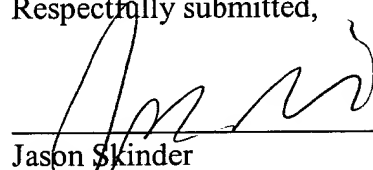
CONCLUSION

It is submitted that all of the claims are in condition for allowance. The Examiner's early re-examination and reconsideration are respectfully requested.

If the Examiner has any questions regarding this amendment or the present application, the Examiner is cordially requested to contact Jason Skinder at telephone number 203-461-7017 or via electronic mail at jskinder@walkerdigital.com.

April 13, 2005
Date

Respectfully submitted,



Jason Skinder
Attorney for Applicants
Registration No. 47,094
jskinder@WalkerDigital.com
203-461-7017 / voice
203-461-7300 / fax